

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FREEPLAY MUSIC, LLC,

Civil Action No. _____

Plaintiff,

v.

ALIBABA GROUP HOLDING LTD.,
ALIBABA.COM LTD.,

Defendants.

**COMPLAINT AND
JURY DEMAND**

Plaintiff Freeplay Music, LLC (“FPM”), through its undersigned attorneys, Baker Hostetler, LLP, complains of defendants Alibaba Group Holding Ltd. and Alibaba.com Ltd. (“Defendants”):

Nature of the Action

1. By this complaint, FPM—a music publisher that has invested and risked money, time, and energy to develop its catalogue of copyrights—seeks redress for Defendants’ copyright infringement. Defendants have been exploiting, without authorization, 17 of FPM’s copyrighted sound recordings and compositions by incorporating them into its promotional videos. Despite being on notice of its infringement, Defendants have refused to remedy its wrongdoing, leaving FPM no alternative but to bring this action.

Parties

2. FPM is a Delaware limited liability company, with a principle place of business in New York, New York.

3. Alibaba Group Holding Ltd. is Cayman Islands limited liability company. Its principal address is 969 West Wen Yi Road, Yu Hang District, Hangzhou 311121, People’s Republic of

China. Alibaba's United States offices are in San Mateo, California, and its agent for service of process in the United States is Corporation Service Company, 1180 Avenue of the Americas, Suite 210, New York, New York 10036.

4. Alibaba.com Ltd. is a Cayman Islands limited liability company. Its principal address is 699 Wang Shang Road, Binjiang District, Hangzhou 310052, People's Republic of China. It is a wholly-owned subsidiary of Alibaba Group Holding Ltd.

Jurisdiction and Venue

5. FPM's claims arise under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338.

6. Venue in this District is proper under 28 U.S.C. § 1391.

7. The Court has personal jurisdiction over Defendants because, upon information and belief, it conducts business over the internet, operates a highly interactive website, derives substantial revenue from interstate commerce, and has performed acts causing harm to FPM, including infringing copyrights belonging to FPM, a New York copyright holder, which give rise to this action.

FPM and Its Business

8. In 2001, Scott Schreer, one of America's most prolific and performed TV composers and producers, launched FPM, a high quality online music library. Schreer, whose credits include, among many others, the *NFL on Fox* theme, is also a contributing composer to a portion of FPM's catalogue.

9. FPM makes its catalogue available on its website. To download music a user must obtain a license that corresponds to the user's use (i.e., personal, commercial, etc.). The cost of such license varies depending on use.

10. With over 200,000,000 impressions to its website as of 2013, FPM is one of the most widely trafficked production music libraries in the industry. Since August 2013, FPM has issued over 2 million licenses to the copyrighted music in its library.

11. All use of FPM's music requires a license.

12. When a user logs on to FPM's website, <http://www.freoplaymusic.com/>, the user is presented with a variety of choices and thousands of musical works (i.e., sound recordings and the underlying musical compositions), all of which are available for certain types of exploitation. Once the user chooses the desired musical work and selects "Add to Cart," the user is prompted to choose a license type:

Duration	License Type	License Fee	Terms
06:16	Select Select YouTube Business Use- Youtube (unlimited URLs)(1 Year(s), \$250.00) Personal use on YouTube only(99 Year(s), \$0.00) Business Multimedia Unlimited (non-broadcast) [worldwide](1 Year(s), \$250.00) Music on Hold [single track](1 Year(s), \$25.00) Web Page Use(1 Year(s), \$100.00) Multimedia one use (non-broadcast) [worldwide](1 Day(s), \$50.00) Game/App Use(1 Year(s), \$150.00) Education In-Classroom Use(99 Year(s), \$0.00) Film Commercial Film Festival [track](7 Day(s), \$50.00) Commercial Unlimited Film Festivals [per track](1 Year(s), \$150.00) Student Film Festival (non commercial)(1 Year(s), \$0.99) Professional Use (per track)(1 Year(s), \$500.00) Indie trailer (theatrical and web) [US Only](1 Year(s), \$250.00) Internet Personal use (Social Media)- non promotional(99 Year(s). \$0.99)		Terms of Use Add more Tracks Proceed to checkout

13. The user cannot "Proceed to Checkout" without choosing a license type.

14. Once the user chooses a license and decides to “Proceed to Checkout,” a window pops up displaying the “FPM License,” requiring the user to enter an email address confirming that he or she has read the terms of the license. A copy of the license is then e-mailed to the confirmation address entered by the user.

15. Until 2013, any exploitation of FPM’s music “posted on a website” required a paid license. After 2013, a user could obtain a free license to use certain music in FPM’s catalogue on YouTube, provided it was for “personal use only.” Any “business use” of FPM’s music requires a paid license.

Defendants

16. Upon information and belief, Defendants operate a leading online marketplace in retail and wholesale trade.

17. Upon information and belief, Defendants promote themselves and market their products and services to its customers through videos. The videos are available online, including, but not limited to, the Internet site hosted by YouTube.

The FPM Copyrights at Issue and Defendants’ Unauthorized Exploitation

FPM’s Copyrights

18. FPM is the owner of the registered copyrights (the “FPM Copyrights”) in and to the musical compositions and sound recordings (the “FPM Copyrighted Music”) set forth below:

- a. “Brighter Day,” covered by Registration No. SR 337-119 covering the collection *Piano Solos Volume 1*.
- b. “Fair Harbor,” covered by Registration No. SR 337-119 covering the collection *Piano Solos Volume 1*.
- c. “Becoming Carmen,” covered by Registration No. SR 335-926 covering the collection *Victory Grand Volume 1*.

- d. "Appalachian Dance," covered by Registration No. SR 333-618 covering the collection *World Mix Vol. 4*.
- e. "Rough Rouge," covered by Registration No. SR 337-144 covering the collection *Hard Rock Volume 1*.
- f. "Change This," covered by Registration No. SR 336-918 covering the collection *Sports Highlights Vol3*.
- g. "Breakaway," covered by Registration No. SR 335-537 covering the collection *Sports Promos Volume 1*.
- h. "Wings of the Wind," covered by Registration No. SR 335-926 covering the collection *Victory Grand Vol 1*.
- i. "Always Be There," covered by Registration No. SR 335-719 covering the collection *Pop Vol 1*.
- j. "Windy Day," covered by Registration No. SR 333-635 covering the collection *TV Themes Vol 1*.
- k. "Whipsaw," covered by Registration No. SR 335-543 covering the collection *Sports Extreme Volume 2*.
- l. "You Too As Well," covered by Registration No. SR 337-221 covering the collection *Sports Highlights Volume 3*.
- m. "For Whom The Bell Tolls," covered by Registration No. SR 335-537 covering the collection *Sports Promos Volume 1*.
- n. "Take Me Higher," covered by Registration No. SR 337-156 covering the collection *Motivational Volume 2*.
- o. "Going Gone," covered by Registration No. SR 374-912 covering the collection *Freestyle Music Corp/DVD#3*.
- p. "Soul Thang," covered by Registration No. SR 337-201 covering the collection *Acid Jazz Volume 1*.
- q. "Floater," covered by Registration No. SR 362-469 covering the collection *Just the Weather Volume 1*.

Defendants' Unlicensed Use of the Music Copyrights

19. Defendants have engaged in at least 26 uses of the FPM Copyrights, including:
- a. FPM's copyrighted musical work "Brighter Day" is exploited on the following website: http://www.youtube.com/watch?v=tHEC9he_Irs.

- b. FPM's copyrighted musical work "Fair Harbor" is exploited on the following website: <http://www.youtube.com/watch?v=JNJ8s2niLC0>.
- c. FPM's copyrighted musical work "Becoming Carmen" is exploited on the following website: <http://www.youtube.com/watch?v=JNJ8s2niLC0>.
- d. FPM's copyrighted musical work "Appalachian Dance" is exploited on the following website: <http://www.youtube.com/watch?v=JNJ8s2niLC0>.
- e. FPM's copyrighted musical work "Rough Rouge" is exploited on the following website: <http://www.youtube.com/watch?v=B1OYpD-ArTA>.
- f. FPM's copyrighted musical work "Change This" is exploited on the following websites: <http://www.youtube.com/watch?v=B1OYpD-ArTA>; <http://www.youtube.com/watch?v=SKXzzAYxmmE>.
- g. FPM's copyrighted musical work "Breakaway" is exploited on the following website: <http://www.youtube.com/watch?v=B1OYpD-ArTA>.
- h. FPM's copyrighted musical work "Wings Of The Wind" is exploited on the following websites: <http://www.youtube.com/watch?v=GvUY2aLALnA>; <http://www.youtube.com/watch?v=egWupq4z5fs>; <http://www.youtube.com/watch?v=-7978xKd1hU>.
- i. FPM's copyrighted musical work "Always Be There" is exploited on the following websites: <http://www.youtube.com/watch?v=GvUY2aLALnA>; <http://www.youtube.com/watch?v=egWupq4z5fs>; <http://www.youtube.com/watch?v=-7978xKd1hU>.
- j. FPM's copyrighted musical work "Windy Day" is exploited on the following websites: <http://www.youtube.com/watch?v=GvUY2aLALnA>; <http://www.youtube.com/watch?v=egWupq4z5fs>; <http://www.youtube.com/watch?v=-7978xKd1hU>.
- k. FPM's copyrighted musical work "Whipsaw" is exploited on the following website: <http://www.youtube.com/watch?v=SKXzzAYxmmE>.
- l. FPM's copyrighted musical work "You Too As Well" is exploited on the following websites: <http://www.youtube.com/watch?v=SKXzzAYxmmE>; <http://www.youtube.com/watch?v=-SkkwjHBIzg>.
- m. FPM's copyrighted musical work "For Whom The Bell Tolls" is exploited on the following website: <http://www.youtube.com/watch?v=SKXzzAYxmmE>.
- n. FPM's copyrighted musical work "Take Me Higher" is exploited on the following website: <http://www.youtube.com/watch?v=-SkkwjHBIzg>.

- o. FPM's copyrighted musical work "Going Gone" is exploited on the following website:
<http://www.youtube.com/watch?v=-SkkwjHBlzg>.
 - p. FPM's copyrighted musical work "Soul Thang" is exploited on the following website:
<http://www.youtube.com/watch?v=-SkkwjHBlzg>.
 - q. FPM's copyrighted musical work "Floater" is exploited on the following website:
http://www.youtube.com/watch?v=6_RsOz_3VkY.
20. Upon information and belief, Defendants posted, or caused to be posted, the videos identified in paragraph 19.
21. Defendants did not receive a license to exploit FPM's Copyrighted Music in the manner set forth in paragraph 19.
22. Upon information and belief, Defendants copied and publicly performed FPM's Copyrighted Music through digital transmissions on the websites set forth in paragraph 19.
23. Upon information and belief, at all relevant times, Defendants maintained editorial control for content performed and/or copied on the websites set forth in paragraph 19.

Count I:
Copyright Infringement

24. FPM incorporates the allegations set forth in paragraphs 1 through 23 hereof, inclusive, as though the same were set forth herein.
25. This cause of action arises under 17 U.S.C. § 501.
26. Each of the FPM Copyrights has been registered with the United States Copyright Office.
27. FPM owns all exclusive rights under 17 U.S.C. § 106 to the FPM Copyrighted Music.
28. Each of the musical works covered by the FPM Copyrights is an original work and constitutes copyrightable subject matter within the meaning of 17 U.S.C. § 102.

29. FPM has never granted Defendants or otherwise authorized Defendants to exploit the musical works covered by the FPM Copyrights.

30. Defendants' acts violate FPM's exclusive rights under 17 U.S.C. §106.

31. Defendants' infringement of the FPM Copyrights is and has been willful, intentional, purposeful, and/or in disregard of FPM's rights.

32. FPM is entitled to its damages and Defendants' profits from the alleged infringement, in an amount to be proven at trial.

33. In the alternative, FPM is entitled to statutory damages, in an amount of up to \$150,000 per infringed copyright.

PRAYER FOR RELIEF

WHEREFORE, FPM respectfully prays for judgment against Defendants as follows:

- (a) for a ruling that Defendants have willfully infringed FPM's copyrights;
- (b) for injunctive relief prohibiting Defendants from exploiting the FPM Copyrighted Music;
- (c) for FPM's damages and, to the extent not duplicative, Defendants' profits attributable to the infringement;
- (d) in the alternative to actual damages, for statutory damages under 17 U.S.C. § 504(c), in an amount of up to \$150,000 per work;
- (e) for FPM's costs of this action, including reasonable attorneys' fees under 17 U.S.C. § 505;
- (f) for prejudgment and post judgment interest; and
- (g) for such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

FPM requests a trial by jury on all issues so triable.

Respectfully submitted,

BAKER & HOSTETLER LLP

Dated: March 15, 2016
New York, New York

By: /s/ Oren J. Warshavsky
Oren J. Warshavsky
Email: owarshavsky@bakerlaw.com
Tatiana Markel
Email: tmarkel@bakerlaw.com
Michelle Usitalo
Email: musitalo@bakerlaw.com
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4624
Facsimile: (212) 589-4201

Attorneys for Plaintiff